High Court of Uttaranchal at Nainital

Criminal Misc. Application No.425 of 2005

1. Pawan Kumar Jindal
   Aged adult
   S/o Sri Jagannath Jindal
2. Manish Kumar Jindal
   S/o Sri Pawan Kumar Jindal
   Both R/o Ram Raj Road
   Jindal Products Compound
   Bazpur, District U.S.Nagar
3. Jindal Products, Bazpur
   Through Sri Pawan Kumar Jindal ……Applicants

Versus

1. Corbett Finance Ltd.
   Through M.D. Sri Balbir Singh
   Moradabad Road, Kashipur
   District U. S. Nagar
2. Judicial Magistrate, Kashipur
   District U. S. Nagar
3. Sessions Judge
   District U. S. Nagar
4. State of Uttaranchal ……Respondents

Date:- 30th July, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri M. C. Pande learned counsel for the applicants and learned A.G.A. for the State.

2. The petition under section 482 Cr.P.C. has been filed for quashing the criminal complaint No.238/2003 Corbett Finance Ltd. Vs. Pawan Kumar & others under section 138 Negotiable Instruments Act as well as the cognizance order dated 10.12.2002 passed by the Judicial Magistrate, Kashipur, District U. S. Nagar.

3. The factual position in a nutshell is that on 24.8.2002 the respondent No.-Corbatt Finance Ltd. filed a complaint against the applicants before the Judicial Magistrate, Kashipur under Section 138

Negotiable Instruments Act. The said complaint was registered as criminal case No.1501/2002. The learned Magistrate recorded the statement under section 200 & 202 Cr.P.C. and thereafter he took cognizance vide order dated 10.12.2002. Feeling aggrieved, the applicants preferred a revision before the Sessions Judge and the same was rejected vide its order dated 20.4.2005. Feeling aggrieved, the applicants have come up before this Court.

4. The learned counsel for the applicants contended that the complaint filed by the respondent No.1 against the applicants is time barred because the notices were served upon the applicants on 11.7.2002 & 17.7.2002. Even, the respondent No.1 has not given the date of service of notice in the complaint as well as in the statement recorded under section 200 & 202 Cr.P.C. As such, the respondent No.1 with the sole aim of harassing the applicants has filed the complaint. The learned counsel for the applicants further contended that 'Jindal Products' is a financial institution registered under the Companies Act, but he has not filed any documentary evidence in support of his contention that the 'Jindal Products' was registered under the Companies Act. Even if, these documents, have been filed before this Court, this Court cannot take into consideration those documents, which are filed before this Court only. The learned counsel for the applicant further contended that there is no prima-facie case against the applicants. The learned A.G.A. refuted the contention and contended that the power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the

Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complaint that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexations, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

5. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

6. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under

section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

7. In view of the aforesaid decisions, the petition is devoid of merit. Therefore, the petition is dismissed.

(J. C. S. Rawat, J.)

Dated 30.7.2005

LSR